



Joint Public Notice

U.S. Army Corps of Engineers, Norfolk District
Virginia Department of Historic Resources

August 25, 2005

Norfolk District Regulatory Program and Section 106 of NHPA

Subject: Suggested Project Planning Steps to Facilitate Compliance with Section 106 of the National Historic Preservation Act for Residential, Commercial and Institutional Development Projects requiring permits pursuant to Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act.

General: Residential, commercial and institutional development projects may require permits from the Norfolk District Corps of Engineers Regulatory Branch (Corps) for work in waters of the U.S., including wetlands. The Corps, as a federal agency, is required to comply with Section 106 of the National Historic Preservation Act (NHPA). Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties included in or eligible for inclusion in the National Register of Historic Places and to consult with the Advisory Council on Historic Preservation (ACHP). The goal of the consultation is to identify historic properties potentially affected by an undertaking, assess its effects, and seek ways to avoid, minimize, or mitigate any adverse effects on historic properties. The regulations that provide the process for Section 106 for the Corps Regulatory Program are 36 CFR Part 800 and 33 CFR Part 325, Appendix C. These regulations provide a key role for the State Historic Preservation Officer (Virginia Department of Historic Resources) in this process.

Project planning is enhanced when all pertinent information is available in the early stages. As part of the pre-application process, the Corps provides confirmation of the extent of waters and wetlands on a site, if requested. The Corps also consults the Data Sharing System (DSS) maintained by the Virginia Department of Historic Resources (VDHR) to determine the presence of any known historic properties. The result of this DSS search is provided to the project proponent or his/her representative at the time of the pre-application site visit.

The focus of this guidance is to provide suggestions that facilitate the Section 106 review process for permit applications involving residential, commercial, or institutional developments. If applicants and their consultants follow certain steps in the project planning process, the Section 106 process can be streamlined while still meeting all regulatory requirements.

Pre-application Consultation. When applicants request a pre-application meeting with the Corps or a confirmation of a wetland/waters delineation, the Corps will perform a search of the VDHR's DSS. If there are known historic properties within the project boundaries, the Corps will recommend further search of the DSS and/or consultation with VDHR to determine the specific nature of the historic properties, their location on the site, and obtain copies of the site inventory forms. Please note that while the DSS is a helpful tool, an archival search is the most

accurate method of determining the extent of known resources and possible visual effects on architectural resources (historic structures, districts and landscapes). An archival search may be recommended in some cases. For questions regarding a project's potential effects on historic resources, the extent of the undertaking, the extent of the permit area, or visual effects of the undertaking on architectural resources, a meeting with the Corps project manager and VDHR is recommended for additional pre-application guidance.

Field Investigations. As part of the due diligence process, applicants and their consultants may conduct field investigations to locate archeological sites and architectural resources (historic structures, districts and landscapes) on the property (Identification or Phase 1 survey) and determine if there are any known architectural resources or significant landscape features that will be visible from the project site. Such surveys will determine the general location of archeological and/or architectural on the project site, as well as the potential for visual effects to historic properties included in or eligible for inclusion in the National Register of Historic Places located on adjacent properties. Consultation with the Corps is strongly recommended prior to conducting any additional historic resource surveys such as Evaluation (Phase II) survey or Data Recovery (Phase III) investigations within the Corps permit area. In particular it should be noted that Data Recovery (Phase III) investigations is defined as an adverse effect requiring the development of a memorandum of agreement.

While Appendix C directs the Corps to require surveys within the permit area, in appropriate circumstances, applicants may find it helpful to voluntarily conduct surveys over the entire property. Conducting a survey of the entire property increases the applicant's knowledge of the property and, consequently, the applicant's ability to locate a proposed development to avoid or minimize the effect on historic resources. Additional investigations will be required if an historic resource is located within the permit area. The permit area is determined on a case-by-case basis and depends on the type of development and the extent of jurisdictional impacts and may include the entire property or only a portion. The permit area may also decrease in size as a result of avoidance and minimization of impacts to waters of the United States (including wetlands). A list of potential cultural resource consultants may be accessed at VDHR's web site: <http://www.dhr.virginia.gov>.

Survey Reports. Information contained in survey reports prepared by consultants with expertise in archaeology, architectural history and historic landscapes is critical for the consultation process. These reports should be prepared by qualified professionals in accordance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation published by the National Park Service in Volume 48, Number 190 of the Federal Register on September 29, 1983 (accessible on the web at http://www.cr.nps.gov/local-law/arch_stnds_0.htm) and current VDHR "Guidelines for Conducting Cultural Resource Surveys in Virginia". Information on the VDHR Guidelines may be accessed and downloaded from VDHR's web site (http://www.dhr.virginia.gov/review/section_106.htm). Reports must be prepared in accordance with the federal and state guidance mentioned above, and provided to the Corps and the VDHR (two copies). Applicants should submit the report along with a cover letter that provides information on the project (i.e. applicant name, project location, Corps and VDHR file numbers) so that the report is routed to the appropriate reviewer. All reports must contain, at a minimum, the items indicated as required in the VDHR Guidelines. Reports submitted to VDHR must be bound and on archivally stable paper (acid-free). Figures must be legible and photographs must be in one of the following formats: original (dry-mounted),

halftone prints, offset lithographic prints, or screened xerographic copies. Should the report not meet the above referenced standards, VDHR will return it for revision.

Application. Permit applications should include all available information about known historic properties as this will facilitate the permit process. Any preexisting survey information or reports should be provided to the Corps, with two copies provided for VDHR. The reports may be forwarded directly to VDHR provided a cover letter is included as mentioned above.

Effect Determination. When it is determined that the Corps is the lead federal agency or no other federal agency is involved, the Corps is responsible for determining if an undertaking will have an effect on properties listed, or eligible for listing, in the National Register of Historic Places. In making its decision, the Corps must also consult with the VDHR, and in some cases, coordinate with the ACHP regarding the determination. If an identified archaeological resource is outside the Corps' permit area or the undertaking is not visible from an historic architectural property or historic landscape listed or eligible for inclusion in the National Register of Historic Places, the Corps may determine that the undertaking will not have an effect on historic properties. If the Corps, in consultation with the VDHR, determines that no historic properties will be affected, the Section 106 process is complete. After consulting with VDHR, the Corps may make a no adverse effect determination in cases where the undertaking is modified or certain permit conditions are imposed to avoid adverse effects. An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a history property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling or association. Adverse effect determinations require consultation to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.

Mitigation Measures. Mitigation measures may be required through permit conditions, for activities resulting in no adverse effect determinations, or a Memorandum of Agreement (MOA) for activities with adverse effects. The applicant, VDHR, the Corps, and in some cases the ACHP, will sign the agreement. Additional entities identified as consulting parties may sign the MOA as concurring parties. This agreement and its terms will be included as a condition of the Corps permit. Execution of the agreement concludes the Section 106 process.

This information should be viewed as general guidance. There are project-specific situations that will necessitate modifications of the process and the extent of information required. For this reason, early and close coordination with the Corps project manager and VDHR is recommended.

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